Hovsepian v. Apple, Inc.

Doc. 74 Att. 1

EXHIBIT 2

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff(s), vs. NEW DESTINY INTERNET GROUP, *ET AL.*, Defendant(s). AND ALL RELATED AND/OR CONSOLIDATED CASE ACTIONS.	)	SA CV 02-1040-JW(MLGx); **Consolidated Cases:** SA CV 02-1048-JW(MLGx); SA CV 02-1063-JW(MLGx); SA CV 02-1165-JW(MLGx); SA CV 03-0217-JW(MLGx); SA CV 03-0218-JW(MLGx); SA CV 03-0219-JW(MLGx); SA CV 03-0259-JW(MLGx); SA CV 03-0271-JW(MLGx); & SA CV 03-0308-JW(MLGx) **Related Cases:** SA CV 03-1801-JW(MLGx); SA CV 03-1803-JW(MLGx); SA CV 03-1804-JW(MLGx); SA CV 03-1805-JW(MLGx); & SA CV 03-1807-JW(MLGx)

MARKMAN ORDER

I. INTRODUCTION

This is a patent infringement case, in which the Plaintiff, Acacia Media Technologies Corporation, ("Acacia") asserts that various internet based adult entertainment providers (collectively, "Defendants") infringe both U.S. Patent No. 5,132,992 (the '992 patent) and U.S. Patent No. 6,144,702 (the '702 patent) (collectively, the "patents-in-suit").

structure that assigns a unique identification code." The Court declines to address further the issue of indefiniteness during claim construction. The Court invites Defendants to file a motion for summary judgment pursuant to § 112, ¶ 1 and ¶ 2 regarding the term "identification encoder."

4. "transceiver" (claims 1, 17 and 27)

The parties do not dispute that a "transceiver" is "a device capable of both sending and receiving information." However, the parties dispute whether that device must share circuit components. The *Dictionary of Computing*, 3rd ed. (1990), cited by both parties defines as a transceiver as follows:

> Acronym for transmitter and receiver. A device that can both transmit and receiver signal on a communication medium. Many communication devices, including *modems, *codecs, and terminals, are transceivers.

Dictionary of Computing 474 (3rd ed. 1990).

Defendants contend that examples of transceivers listed in the *Dictionary of Computing* are devices that perform two functions using shared circuitry; such as modems, an acronym for a device that is a modulator and demodulator; and codecs, an acronym for a device that is a coder and decoder.

In the specification, the description of a transceiver is at a block level that does not elaborate on the workings of the transceiver, much less its circuitry. The specification does illustrate the transceiver as a single box on figures 2b and 6 of the '702 patent.

The Court construes "transceiver" to mean "a singular device capable of both sending and receiving information."

5. "wherein said identification encoder allows entry of a popularity code" (claims 6 and 27 of the '702 patent)

The disputed phrase "wherein said identification encoder allows entry of a popularity code" appears in claims 6 and 27 of the '702 patent. Acacia's proposed construction of the phrase is: "a popularity code is the symbols, letters, or words or combinations thereof used to represent the popularity of a particular item. The identification encoder allows entry of the popularity code." *See* Plaintiff's Claim Construction Brief at 28 (May 7, 2004).